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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,220	11/07/2001	Jason K. Trotter	ITWO:0016	5660

7590

02/23/2005

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EXAMINER

COTTINGHAM, JOHN R

ART UNIT	PAPER NUMBER
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2116

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/066,220

Applicant(s)

TROTTER ET AL.

Examiner

John R. Cottingham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 4-6, 8, 13-15 and 17-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 7 9-12 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of apparatus claims 1-52 and the election of Figure 8 in the reply filed on 11/10/04 is acknowledged. The traversal is on the ground(s) that the Examiner did not explain in clear enough detail for the applicant to understand the withdrawal of claim 32 and why it is not persuasive. This is not found persuasive because Claim 32 claims "first and second linkage sockets" which are only show in Figure 12. All the other figures refer to a single shaft with a single socket. Thus claim 32 is not generic to the other species. With the election of species, all dependant claims of a generic claim that are not drawn to the elected species are not treated on the merits until the generic claim is deemed allowable and at that time all dependant claims of that generic claim would be allowable as well. As for the Applicant believing that the species are not mutually exclusive, the examiner disagrees because the Applicant has not provided proof that the species are not mutually exclusive nor has the Applicant admitted clearly on the record that they are all obvious variations of the same thing. The examination of all the claims such as those set forth in the restriction puts a serious burden on the examiner since the claims are not classified in the same fields of endeavor. Also the requirement of the examiner having to find every variation of the invention also provides a serious burden on the examiner. As for the argument address toward the inability of the examiner to withdraw claims direct toward non elected species, the Applicant is incorrect in his assumption. By electing a species, such as Figure 8, the Applicant limiting the examination to only the claims that read on

figure 8. It is within the Examiner's right to withdraw claims directed to non-elected species.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 7, 9-12, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Muaghan et al. U.S. Patent 6,059,480. Muaghan et al. shows all of the claimed subject matter of a mechanical linkage in Figures 1-11.

Regarding claim 1, a mechanical linkage, comprising an elongated extruded member 22 comprising a structural cross-section and a linkage end, wherein the structural cross-section is configured to support a linkage end 24 under a mechanical load and wherein dimensions of the structural cross-section are substantially constant in a direction transverse to the structural cross-section.

Regarding claim 2, wherein the linkage end comprises an integral joint member 34 formed by the structural cross-section.

Regarding claim 3, wherein the linkage end comprises an integral socket 32 formed by the structural cross-section.

Regarding claim 7, wherein the integral socket 32 has a square geometry.

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Regarding claim 9, a desired device 24 having a modular connector 34 disposed in the integral socket.

Regarding claim 10, the desired device is a joint member.

Regarding claim 11, the joint member comprises a molded ball 36.

Regarding claim 16, the elongated extruded member is extruded lengthwise. The extruded limitation is a product by process limitation and does not give patentable weight to the claim as long as the prior art shows the product.

Response to Arguments

3. Applicant's arguments filed 11/10/04 have been fully considered but they are not persuasive. Applicant erroneously relies on *In re Angstadt*, 190 U.S.P.Q. 214, 217 (C.C.P.A. 1976) to support Applicant's argument that the limitation "extruded member" should be given full patentable weight. The *In re Angstadt* case is not directed to examination of hybrid claims in view of 35 U.S.C. § 102 or 103. This case is in reference to the application of 35 U.S.C § 112 and has not bearing on hybrid claims or Product by Process claims. The Applicant's attention is drawn to MPEP § 2113 which states "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Thus Maughan

meets the claimed limitations as modified by the applicant. Applicant further argues that because Maughan has a socket that has to be machined out or molded and thus cannot be extruded, the Examiner disagrees. The linkage of Maughan can be extruded and then the hole can be machined into the linkage.

Next the Applicant argues that claimed invention is limited to "the cross-section [being] **substantially** constant in a direction transverse to the structural cross-section. The Examiner would like to point out that the Applicant uses the term "substantially" which allows for deviations in the shape over the specified distance, and even though a portion of the linkage of Muaghan is tapered, it still falls within the "substantially constant" limitation since this is not an absolute term.


4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Cottingham whose telephone number is (571) 272-7079. The examiner can normally be reached on Monday - Thursday, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (571) 272-3670. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


John R. Cottingham
Primary Examiner
Art Unit 2116

jrc

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